

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**

---

**IN RE:**

**ENCORE PROPERTY MANAGEMENT  
OF WESTERN NEW YORK, LLC**

**d/b/a Blossom Business Center  
d/b/a Imperial Manor Apartments  
d/b/a Normandie Apartments**

---

**NOTICE OF APPEAL  
CHAPTER 11  
BK CASE NO. 2-18-20014-PRW**

**NOTICE OF APPEAL**

Debtor Encore Property Management of Western New York, LLC ("Encore"), by its attorneys, Elliott Stern Calabrese LLP, appeals under 28 U.S.C. § 158(a) and Rules 8002 and 8004 of the Federal Rules of Bankruptcy Procedure from the Decision and Order Dismissing Chapter 11 Petition in Bad Faith under 11 U.S.C. § 1112(b) [Dkt. No. 52 filed 2/16/2018]

The Names of the parties to the Order appealed from, and the names and addresses and telephone numbers of their respective attorneys, are as follows:

John K. McAndrews, Esq., Woods Oviatt Gilman LLP, 2 State Street, Rochester, New York 14614 (585.987.2800)

Timothy P. Lyster, Esq., Woods Oviatt Gilman LLP, 2 State Street, Rochester, New York 14614 (585.987.2800)

Ingrid C. Palermo, Esq., Attorney for Timothy Foster, 350 Linden Oaks, Suite 310, Rochester, New York 14625 (585.362.4700)

U.S. Trustee's Office, U.S. Federal Building, 100 State Street, 6<sup>th</sup> Floor, Rochester, New York 14614

George H. Gray, Esq., 625 Panorama Trail, Rochester, New York 14625 (585.218.8620)

Joseph Taddeo, Esq., 45 Exchange Street, Suite 608, Rochester, New York 14614 (585.325.2124)

Melvin & Melvin, PLLC, 217 South Salina Street, Syracuse, NY 13202 (315.422.1311)



Montalbano Condon & Frank, 399 Knollwood Road, White Plains, NY 10603 (845.634.7010)

Patrick Loreto, 1002 McKinley Avenue, Rome, NY 13440

Dated: Rochester, New York  
February 26, 2018

ELLIOTT STERN CALABRESE LLP

By: \_\_\_\_\_

David S. Stern

One East Main Street, 10 Floor

Rochester, New York 14614

Telephone: 585.232.4724

Facsimile: 585.232.6674

dstern@elliottstern.com



JS 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

In Re: Encore Property Management of Western New York, LLC

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

David S. Stern, Esq., Elliott Stern Calabrese LLP, 1 East Main Street,  
Rochester, New York 14614

**DEFENDANTS**

WELLS FARGO BANK, NA, AS TRUSTEE

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)  
John K. McAndrews, Esq., Woods Oviatt Gilman LLP, 2 State Street,  
Rochester, New York 14614

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input checked="" type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District (specify)    ☐ 6 Multidistrict Litigation - Transfer    ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Paul R. Warren, U.S.B.J.

DOCKET NUMBER 18-20014-PRW

DATE

02/26/2018

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE



**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**

---

**IN RE:**

**ENCORE PROPERTY MANAGEMENT  
OF WESTERN NEW YORK, LLC**

**d/b/a Blossom Business Center  
d/b/a Imperial Manor Apartments  
d/b/a Normandie Apartments**

---

**Affidavit of Service  
Notice of Appeal  
BK Case #: 2-18-20014-PRW**

**STATE OF NEW YORK)  
COUNTY OF MONROE) SS:**

I, Mark A. Schwenk, I am employed by Elliott Stern and Calabrese, I am over 18 years of age and reside in Orleans County, New York, 14470. On February 26, 2018, I mailed a copy of the Notice of Appeal in regard to the above referenced matter addressed to each of the following persons at their last known addresses set forth after each name:

U.S. Bankruptcy Court, U.S. Federal Building, 100 State Street, 6<sup>th</sup> Floor, Rochester, New York 14614

John K. McAndrews, Esq., Woods Oviatt Gilman LLP, 2 State Street, Rochester, New York 14614

Timothy P. Lyster, Esq., Woods Oviatt Gilman LLP, 2 State Street, Rochester, New York 14614

Ingrid C. Palermo, Esq., Attorney for Timothy Foster, 350 Linden Oaks, Suite 310, Rochester, New York 14625

U.S. Trustee's Office, U.S. Federal Building, 100 State Street, 6<sup>th</sup> Floor, Rochester, New York 14614

George H. Gray, Esq., 625 Panorama Trail, Rochester, New York 14625

Joseph Taddeo, Esq., 45 Exchange Street, Suite 608, Rochester, New York 14614

Melvin & Melvin, PLLC, 217 South Salina Street, Syracuse, NY 13202

Montalbano Condon & Frank, 399 Knollwood Road, White Plains, NY 10603



Patrick Loreto, 1002 McKinley Avenue, Rome, NY 13440

Encore Property Management of Western New York, LLC, c/o Jason G. Palmer, P.O. Box 274,  
Clinton, NY 13323

s/ Mark A. Schwenk

---

**Mark A. Schwenk**

**On February 26, 2018, Mark A. Schwenk,  
personally appeared before me,**

s/ Amy E. Shoniker

---

**Amy E. Shoniker**

**Notary Public**

**State of New York**

**County of Monroe**

**No. 01SH6076494**

**My Commission Expires: 6/24/18**